



U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED]  
XSJ 88 152 1013

Office: SAN JUAN

Date: FEB 05 2007

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the  
Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, you no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The termination of the applicant's temporary resident status by the District Director, San Juan, Puerto Rico, is before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director terminated the applicant's temporary resident status because the applicant failed to file the application for adjustment of status from temporary to permanent residence within the 43-month application period.

On appeal, counsel for the applicant states that the applicant failed to file the application to adjust status to lawful permanent resident because of health problems.

The status of an alien lawfully admitted for temporary residence under section 245A(a)(1) of the Act may be terminated at any time if the alien fails to file for adjustment of status from temporary to permanent resident on Form I-698 within forty-three months of the date he or she was granted status as a temporary resident under § 245a.1 of this part. 8 C.F.R. § 245a.2(u)(1)(iv).

The applicant was granted temporary resident status on April 13, 1989. The 43-month eligibility period for filing for adjustment expired on November 12, 1992. The applicant never filed a Form I-698, Application for Adjustment of Status from Temporary to Permanent Resident. The district director therefore terminated the applicant's temporary resident status.

On appeal, counsel for the applicant states the applicant was unable to apply for adjustment of status to lawful permanent resident during the 43-month application period because he is disabled and unable to work as a result of an accident. Counsel states that the applicant is married to a United States citizen and has seven United States citizen children.

Counsel's statements on appeal have been considered. Nevertheless, there is no waiver, even for humanitarian reasons, for failure to file the Form I-698 within the 43-month application period. As the applicant has not overcome the basis for termination of status, the appeal must be dismissed.

It is noted for the record that the applicant is the beneficiary of an approved immigrant visa petition filed on his behalf by his wife, [REDACTED] United States citizen.

The applicant is ineligible for temporary residence for the above stated reasons, with each considered as an independent and alternative basis for denial.

**ORDER:** The appeal is dismissed. This decision constitutes a final notice of ineligibility.